



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 17 2010

Benjamin L. Ginsberg, Esq.
Patton Boggs, LLP
2550 M Street, NW
Washington, DC 20037

RE: MUR 6213
Decidedly Unhappy Mainstream
Patriots Rejecting Evil-mongering
Incompetent Democrats Political
Action Committee (DUMPREID
PAC) and Charles Muth, in his
official capacity as treasurer

Dear Mr. Ginsberg:

On September 16, 2009, the Federal Election Commission notified your clients, Decidedly Unhappy Mainstream Patriots Rejecting Evil-mongering Incompetent Democrats Political Action Committee (DUMPREID PAC) and Charles Muth, in his official capacity as treasurer ("the Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on April 27, 2010, voted to dismiss this matter, and accordingly, closed its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Based on the information before the Commission, it appears that the Committee may have violated 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a) by including Senator Reid's last name as part of its official name in its Form 1, and 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3) by using deficient disclaimers on its website and mailer that fail to use the Committee's full name in the "paid for by" section. Under the Act and the Commission's Regulations, a political committee's Form 1 must include its full name, and an unauthorized political committee "shall not include the name of any candidate in its name." 2 U.S.C. §§ 432(e)(4); see 11 C.F.R. § 102.14(a). Also, an unauthorized committee's public communications, including mass mailings, and Internet websites available to the general public, must contain a disclaimer including, *inter alia*, the full name of the sponsoring committee, its Internet address or street address and telephone

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number, and a statement that it was not authorized by any candidate or candidate's committee. The disclaimer must also clearly identify who paid for the communication or website. 2 U.S.C. § 441d; *see* 11 C.F.R. §110.11(b)(3).

The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's Regulations, by amending its Form 1 to remove the parenthetical "(DUMPREID PAC)" from its official name, and by including the Committee's full name in the "paid for by" section of its website disclaimer and in any future public communications.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Decidedly Unhappy Mainstream Patriots
Rejecting Evil-mongering Incompetent
Democrats Political Action Committee
(DUMPREID PAC) and Charles Muth,
in his official capacity as treasurer

MUR: 6213

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Sam Lieberman, Chairman of the Nevada State Democratic Party. See 2 U.S.C. § 437g(a)(1). For the reasons set forth below, the Commission has decided to exercise its prosecutorial discretion and dismiss the complaint in MUR 6213, and close the file.

II. FACTUAL SUMMARY

The Decidedly Unhappy Mainstream Patriots Rejecting Evil-mongering Incompetent Democrats Political Action Committee (DUMPREID PAC) and Charles Muth, in his official capacity as treasurer (the "Committee"), was formed "to defeat Sen. Reid in the 2010 election," according to an August 4, 2009, press release on its website. The Committee filed a Form 1 on August 17, 2009, stating it was an unauthorized committee, and an amended Form 1 on August 27, 2009, reflecting a change in the Committee's address to a post office box. Both state the Committee's name as "Dump Reid Political Action Committee." On September 19, 2009, eight days after the complaint was filed, the Committee filed a second amended Form 1 stating the Committee's name to be "Decidedly Unhappy Mainstream Patriots Rejecting Evil-mongering Incompetent Democrats Political Action Committee (DUMPREID PAC)."

The complaint attaches a mailer, which appears to be a two-page public communication that expressly advocates against Senator Reid's re-election and solicits contributions, and

1 maintains two websites, and asserts that the Committee sent it out. Based on the original and
2 first amended Form 1s, the complaint alleges that the Committee's official name includes
3 Senator Reid's name in violation of 2 U.S.C. § 432(e)(4). The complaint further alleges that the
4 Committee violated the disclaimer requirements at 2 U.S.C. § 441d and 11 C.F.R. § 110.11, by
5 failing to include the appropriate disclaimers in a printed box on a public communication in the
6 form of a mailer that expressly advocates against Senator Reid's re-election and solicits
7 contributions, using "PAC" instead of spelling out "Political Action Committee," and failing to
8 include in disclaimers on both the mailer and the Committee's website the Committee's Internet
9 or street address and telephone number and a "not authorized by any candidate or candidate's
10 committee" statement. The complaint attaches a copy of the mailer that it alleges violated the
11 disclaimer requirements.

12 The response states that the most recent Form 1 was filed to "clarify" the Committee's
13 "full and proper name," asserts that DUMPREID "is an acronym or abbreviation" and maintains
14 that DUMPREID PAC is a Committee project, and as such, is allowed to use Senator Reid's
15 name. The response further states that the Committee's original and first amended Form 1s were
16 accepted by the Commission "without notification . . . that the [Committee's] name was
17 somehow contrary to Commission regulations." Response at 1, 4-5.

18 With respect to the mailer, the response further asserts that "[t]he PAC's printed mailings
19 and website conform to federal law and Commission regulations with respect to required
20 disclaimers" and "the only mailing the PAC has ever distributed contains the required
21 disclaimers." Response at 2. The response maintains the complaint references a draft and not
22 the final version, and attaches the mailer that the Committee actually distributed. The response
23 points out that the version of the mailer attached to the complaint contains a "Getty Images"

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1 watermark, demonstrating its draft status. The copy of the mailer that the Committee asserts was
2 actually distributed contains a disclaimer in a printed box which includes the name of the
3 Committee as it was then on file with the Commission (Dump Reid Political Action Committee),
4 its website address and a "not authorized by any candidate or candidate's committee" statement.

5 The response acknowledges that its website's initial disclaimer was inadequate because
6 from August 4 until September 11, 2009, it lacked the "not authorized by any candidate or
7 candidate's committee" statement and Committee's address, but requests dismissal of the
8 complaint for this "technical violation." Response at 3-4, 6. According to the response, the
9 second website mentioned in the complaint, www.dumpreid.com, is not owned, operated or
10 funded by the Committee, but is operated as an independent entity by Muth, the Committee's
11 treasurer. Response at 2, 4. There is no evidence to the contrary and it appears to have been shut
12 down, as we were unable to find it on the Internet. The Committee's current website disclaimer
13 appears as follows:

14 PAID FOR BY DUMP REID PAC
15 AND NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE
16 A SPECIAL PROJECT OF THE DECIDEDLY UNHAPPY MAINSTREAM PATRIOTS
17 REJECTING EVIL-MONGERING INCOMPETENT DEMOCRATS PAC
18 WWW.DUMPREID.COM

19
20 **III. LEGAL ANALYSIS**

21 **A. The Committee's Name**

22 A political committee's Form 1 must include its full name, and an unauthorized political
23 committee "shall not include the name of any candidate in its name." 2 U.S.C. §§ 432(e)(4),
24 433(b)(1); see 11 C.F.R. §§ 102.2(a)(1)(i), 102.14(a). Although the Committee may not use
25 Senator Reid's name as part of its official name as reported on Form 1, it may use it as part of a

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1 special project name because the DUMP REID title clearly and unambiguously shows opposition
2 to Senator Reid. *See* 11 C.F.R. § 102.14(b)(3).

3 The Committee's assertion that "Dump Reid" is an "aeronym or abbreviation" and
4 "Dump Reid PAC" is an "ongoing fundraising project" do not change the fact that Senator
5 Reid's name is listed as part of the official name of the Committee. 2 U.S.C. § 432(e)(4)

6 **B. Disclaimers**
7

8 An unauthorized committee's public communications, including mass mailings, and
9 Internet websites available to the general public must contain a disclaimer including, *inter alia*,
10 the full name of the sponsoring committee, its Internet address or street address and telephone
11 number, and a statement that it was not authorized by any candidate or candidate's committee.
12 2 U.S.C. §§ 431(22), 441d; 11 C.F.R. §§ 100.26, 110.11(a)(1). The disclaimer must also clearly
13 identify who paid for the communication or website. *See* 2 U.S.C. § 441d(a)(1).

14 The disclaimers for the mailer and the website each read "Paid for and authorized by
15 DUMP REID PAC." *See* 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). As written, these
16 disclaimers indicate that the mailer and website are directly paid for by the "ongoing fundraising
17 project" DUMPREID PAC, not the Committee itself. *See Common Cause*, 842 F.2d at 440, 443
18 (stating that permitting the use of a special project name in a disclaimer instead of the
19 committee's official name would "shatter[]" the regulatory structure because readers and
20 potential contributors would have no coherent means to discover the identity and status of those
21 soliciting them); *Special Fundraising Projects*, 59 Fed. Reg. at 17267 (disclaimers must clearly
22 identify who paid for the communication). It appears that the final version of the mailer,
23 attached to the response, is otherwise in accordance with the disclaimer requirements. The
24 response acknowledges that the website initially lacked the "not authorized by any candidate or

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1 candidate's committee" statement and the Committee's address, although that has now been
2 corrected. Response at 3.

3 The Committee may have violated 2 U.S.C. § 432(e)(4) and 11 C.F.R. § 102.14(a) by
4 including Senator Reid's last name as part of its official name in its Form 1, and 2 U.S.C. §
5 441d(a)(3) and 11 C.F.R. § 110.11(b)(3) by using deficient disclaimers on its website and mailer
6 that fail to use the Committee's full name in the "paid for by" section. However, in light of the
7 fact that the current Form 1 and the website disclaimer include the Committee's full name in the
8 text and the mailer used the "DUMPREID" name, therefore providing partial identification, the
9 Commission has decided to exercise its prosecutorial discretion and dismiss the complaint in
10 MUR 6213, and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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